



Memorandum

TO: PLANNING COMMISSION

FROM: Rosalynn Hughey

SUBJECT: See Below

DATE: April 30, 2018

SUBJECT: File No. PP18-046. AN ORDINANCE OF THE CITY OF SAN JOSÉ AMENDING TITLE 20 (ZONING ORDINANCE OR ZONING CODE) OF THE SAN JOSÉ MUNICIPAL CODE TO AMEND SECTIONS 20.30.150 AND 20.30.440 OF CHAPTER 20.30 TO MODIFY DEVELOPMENT STANDARDS AND REQUIREMENTS FOR SECONDARY DWELLING UNITS (ALSO KNOWN AS ACCESSORY DWELLING UNITS), INCLUDING LOT SIZE, UNIT AREA, UNIT TYPE, SETBACKS AND HEIGHT; TO AMEND SECTIONS 20.90.120 AND 20.90.220 OF CHAPTER 20.90 TO MODIFY PARKING REQUIREMENTS AND DEVELOPMENT STANDARDS FOR SECONDARY DWELLING UNITS; TO AMEND SECTIONS 20.100.300 AND 20.100.1040 TO MAKE MINOR MODIFICATIONS TO SINGLE FAMILY PERMITTING AND RECORDATION PROVISIONS; AND TO MAKE OTHER TECHNICAL, NON-SUBSTANTIVE, OR FORMATTING CHANGES WITHIN THOSE SECTIONS OF TITLE 20.

RECOMMENDATION

Staff recommends that the Planning Commission consider the Determination of Consistency with the Final Program EIRs and recommend to the City Council the approval of an ordinance amending Title 20 (the Zoning Code) of the San José Municipal Code to modify provisions for Secondary Dwelling Units (also known as Accessory Dwelling Units or ADUs) in Residential Zoning Districts and related updates as described above.

OUTCOME

Approval of the proposed Zoning Code amendments will address work plan items in the General Plan's Housing Element so that it complies with State law and Council direction, and will specifically facilitate development of additional housing units in Residential Zoning Districts. The Zoning Code amendments will specifically:

- Expand the Zoning Districts where ADUs are allowed;
- Increase the number of single-family lots that qualify for ADUs;
- Modestly increase the maximum size of ADUs;
- Ease and clarify setback requirements for ADUs; and
- Ease and clarify parking requirements for ADUs.

A potential resulting outcome of the amendments is that the housing stock within existing developed neighborhoods of the City of San José may be enhanced and expanded by enabling more lots to qualify for construction of ADUs. ADUs are a type of housing that can efficiently leverage the existing infrastructure of our developed neighborhoods while contributing to the great need for more housing options within the City without impacting the character of the many single-family neighborhoods throughout the city. ADUs can provide an income opportunity for homeowners; may help people provide housing to their extended family members; and may create more affordable housing opportunities for our community.

BACKGROUND

City Council prioritization, state laws, and the Envision San José 2040 General Plan have been the impetus for the proposed ordinance update:

City Council prioritization. San José allowed and regulated the building of ADUs since June 2008, following a pilot program initiated in April 2006. On March 7, 2017, at the City Council priority-setting session, established a priority “to modify the Municipal Code to allow and facilitate the building of secondary detached residential units on residential parcels.” The Council maintained this priority as Priority Item No. 9 at the priority-setting session held on October 17, 2017.

State laws. In recent years, state legislation has become a driving force for local ADU reform. Up until 2017, cities and counties had substantial flexibility in adopting local ordinances to regulate ADUs. With the goal of making ADU construction easier, State legislation (SB 1069, AB 2299, and AB 2406) took effect January 1, 2017 and placed limitations on this flexibility by imposing certain mandates on local regulation of ADUs. San José’s Zoning Code (Chapter 20.30) was updated in December 2016 to conform to this legislation.

Two more state bills, AB 494 and SB 229, were approved by the Governor in October 2017 and became effective January 1, 2018. These laws clarify and improve various provisions of the law to promote the development of ADUs, including allowing ADUs to be built concurrently with a single-family home, opening areas where ADUs can be built to include most zoning districts that allow single-family uses, modifying fees from utilities, such as special districts and water corporations, and reducing parking requirements. The proposed Zoning Codes amendments outlined in this memorandum will align with these state laws.

Envision San José 2040 General Plan. The Envision San José 2040 General Plan has Land Use and Housing goals and policies that acknowledge the value of streamlining the land use entitlement processes to increase the availability of affordable housing throughout the city. The Analysis Section will further discuss how the proposed changes facilitate these goals.

ANALYSIS

This analysis begins with outlining the proposed amendments that are will affect Section 20.30.150 of the Zoning Code:

1. Zoning districts
2. Minimum lot sizes
3. Maximum unit sizes

4. Height
5. Front and rear setbacks
6. Parking requirements
7. Design standards
8. Other provisions

Proposed Zoning Code Amendments

1. ***Zoning Districts (Section 20.30.150) - Expanding the Zoning Districts Where ADUs Are Allowed.*** The Zoning Code currently allows ADUs in the Single-Family Residential Zoning Districts (R-1) and Two-Family Residential Zoning District (R-2), on lots on which a single-family residence is constructed, and in Planned Development Zoning Districts that meet the R-1 development standards. State law now requires that ADUs be allowed in any zoning district where a single-family dwelling is a permitted use. Staff therefore recommends that ADUs be allowed in the Multiple Residence Zoning District (R-M) on lots where a single-family detached residence is constructed, and in Planned Development Zoning Districts that function as single-family lots, as permitted by the approved Planned Development Permit development standards and permit conditions, and subject to the regulations of Section 20.30.150 “Secondary Units.” This update will facilitate new ADUs on most single-family lots with a single-family residence constructed on the lot.
2. ***Minimum Lot Sizes (Section 20.30.150) - Lowering the Minimum Size Enables More Lots to Qualify for ADUs.*** The Zoning Code currently requires a minimum lot size of 5,445 square feet for new primary dwellings in the R-1-8 Single-Family Residence Zoning District. This lot size is currently also established as the minimum threshold to allow an attached or detached ADU. State law made no changes related to minimum lot size, and the City retains flexibility to specify and impose minimum lot size(s). To increase the potential number of viable sites for ADUs, many stakeholders recommended the City reduce the minimum required lot size. Staff recommends lowering the minimum threshold from 5,445 square feet to 3,000 square feet. Although the typical lot size in San José is approximately 6,000 square feet, many lots within older neighborhoods are below the minimum lot size of 5,445 square feet, and would benefit from this update. Staff does not recommend allowing ADUs on substandard lots, which are lots less than 3,000 gross square feet. It should be noted that lot size is only one factor in determining the allowance for an ADU; rear yard coverage ratios and parking requirements will also determine whether an ADU is allowed.
3. ***Maximum Unit Sizes (Section 20.30.150) – Modestly Larger ADUs Are Allowed.*** The Zoning Code currently imposes a maximum unit size for ADUs ranging from 600 square feet to 800 square feet depending on lot size, as shown in the following table. There has been no change in State law related to minimum lot size and the City retains flexibility to specify and impose maximum lot size(s). The Zoning Code currently allows a maximum gross floor area of 600 square feet for a 5,445 square foot lot. This maximum floor area was retained for lot sizes greater than 3,000 square feet and less than 5,445 square feet, and incrementally increased for other lot sizes based on lot coverage. Staff recommends the maximum gross floor areas listed in the table.

Comparison of Current/Proposed Maximum Floor Area

Minimum Lot Size	Current Regulations: Maximum Floor Area	Proposed Regulations: Maximum Floor Area
At least 3,000 square feet and less than 5,445 square feet	Not allowed	600 square feet
At least 5,445 square feet and up to 9,000 square feet	600 square feet	700 square feet
Greater than 9,000 square feet and up to 10,000 square feet	650 square feet	800 square feet
Greater than 10,000 square feet	800 square feet	900 square feet

It should be noted that the size of the ADU may be limited by setback requirements and the rear yard coverage calculation. The latter limits a lot to 40% rear yard coverage for all accessory structures, accessory buildings, and an ADU in order to retain optimal useable open space in the rear yards. Staff received comments from design professionals and housing stakeholders to restrict the unit size to a specific area rather than assign a percentage or coverage based on lot size. Staff is recommending that unit size continue to be subject to the regulations of rear yard coverage. This would maintain the secondary unit as an incidental use to the primary dwelling as it keeps a second unit from being too large and not truly incidental to the main house.

4. ***Height (Section 20.30.150) – Height Limits May be Increased Only for Newly-Allowed Second Story ADUs.*** The Zoning Code currently restricts ADUs to one story with a maximum height of 18 feet with an average height of 14 feet. There has been no change in State law related to height limits and the City retains flexibility to specify and impose height limits. Staff proposes to allow an ADU above an existing detached accessory building, including a garage, to minimize the building footprint within the rear yard and retain existing parking, where applicable. Staff recommends that these maximum height limits be retained for a single story ADU, but that the maximum height be increased to 22 feet for an ADU built as a second story unit above an accessory building. To address privacy issues, staff recommends that an ADU built as a second story have high window sills, a minimum setback of 5 feet from the rear and side property lines, and be in compliance with Building and Fire Code provisions.
5. ***Front and Rear Setbacks (Section 20.30.150) – Setback Rules are Maintained With Some Exceptions.*** The Zoning Code currently requires an ADU to maintain the setback requirements of the zoning district in which the one-family dwelling is located, including any setback required because of “no build” easements” except:
 - Rear setback is reduced to 5 feet for one story ADUs if the ADU doesn’t occupy more than 50% of the otherwise required rear setback.

- No setback is required for an existing garage converted to an ADU.
- A minimum rear and side setback of 5 feet is required for detached ADU constructed above a garage.

There has been no change in State law related to setbacks and the City retains flexibility to specify and impose setback requirements. The Zoning Code currently allows the construction of new ADUs within the same footprint as a demolished existing garage, and subject to parking exemptions in accordance with State law. The new update proposes to allow the conversion of accessory buildings, including a garage, to an ADU and utilize the existing footprint, and constructed in compliance with Building and Fire Code. Staff recommends that the one-family dwelling default setback provision be maintained, but that the exceptions be clarified and expanded, as follows:

- a. *Conversion of Existing Accessory Building* – An existing Accessory Building, or garage, that is converted to an ADU will be allowed to have the minimum setbacks needed to meet current Building and Fire Code requirements.
 - b. *New detached ADU* - A new detached ADU that does not exceed the maximum height specified for a one story ADU will be allowed to have the minimum setbacks needed to meet current Building and Fire Code requirements.
 - c. *Second Story Accessory Dwelling* - A minimum setback of five feet from the side and rear lot lines shall be required for an ADU that is constructed above an existing Accessory Building, including a detached garage.
 - d. Additional setback requirements may apply under the Building and Fire Codes or as a result of “no-build” easements.
6. ***Parking Requirements (Section 20.30.150) – Must Align with State Law.*** State law limits the parking requirements that the City can impose related to construction of ADUs, including limitations on parking for the new ADU, as well as replacement parking for the single-family residence where a garage, carport, or other covered parking is demolished or converted to create an ADU. Staff recommends the following amendments to the Zoning Code to better align ADU parking requirements with current State law:
- Clarify that parking is not required for a new ADU located within ½ mile of a bus stop, regardless of frequency of service in conformance with State requirements.
 - Paving in the Front Setback Area is revised to apply 50% paving limits to pervious as well as impervious paving. ***(Section 20.30.440)***
 - Clarify that replacement parking may be required for a garage, carport, or other parking structure conversion and define conversion broadly. ***(Section 20.90.220)***
7. ***Design Standards (Section 20.30.150) – ADUs are to be Visually Compatible.*** In order to provide greater flexibility for second story detached units, staff recommends that the appearance of the ADU be visually compatible and blend with the architecture of the one-

family dwelling. Staff recommends that attached ADUs be required to incorporate architectural style, similar materials, and color of the one-family dwelling, including but not limited to roofing, siding, windows, and doors.

8. ***Other Provisions.*** The following additional Zoning Code changes are recommended to clarify the Code requirements and streamline Code procedures. None of these changes are required by State law.
- Required kitchen facilities (***Section 20.30.150***) - Minor revision to better align with State law.
 - Bathroom Facilities (***Section 20.30.150***) - Clarification of required features.
 - Single Family House Permits (***Sections 20.100.300, 20.100.1040***) - Eliminate recordation requirement for single family house permit that are subject to administrative appeal.

General Plan Conformance

The proposed changes to the Zoning Code are intended to facilitate development in Residential Zoning Districts and address work plan items in the General Plan’s Housing Element so that it complies with State law and Council direction. The following analysis considers how the proposed amendments will achieve these key objectives consistent with relevant General Plan Major Strategies, Goals, Policies, and Actions.

Land Use Goals/Policies. The Envision San José 2040 General Plan has goals and policies that acknowledge the value of streamlining the land use entitlement processes to increase the availability of affordable housing throughout the city. These goals and policies include:

1. General Land Use Goal LU-1 – Establish a land use pattern that fosters a more fiscally and environmentally sustainable, safe, and livable city.
2. General Land Use Action LU-1.9 – Review criteria in the Zoning Ordinance and update it as appropriate to reflect Land Use Goals, Policies and implementation Actions in this Plan.

Analysis: The proposed Zoning Code amendments and other minor edits to Chapter 20.30 Residential Zoning Districts provide more flexibility for the construction of ADUs throughout the city, creating affordable housing opportunities and a more livable city.

Housing Element Goals/Policies. The proposed amendments are consistent with Housing Goals, Policies, and Actions in the General Plan including but not limited to the following:

1. Goal H-1 Housing – Social Equity and Diversity – Provide housing throughout our City in a range of residential densities, especially at higher densities, and product types, including rental and for-sale housing, to address the needs of an economically, demographically, and culturally diverse population.

2. Housing – Social Equity and Diversity Policy H-1.2 – Facilitate the provision of housing sites and structures across location, type, price, and status as rental or ownership that respond to the needs of all economic and demographic segments of the community including seniors, families, the homeless, and individuals with special needs.

Analysis: The proposed amendments will allow more homeowners the opportunity to build a secondary unit on existing single-family lots. These units will be added to the range of affordable housing options being pursued by the city and state. This type of housing option, while adding density to single-family neighborhoods, does not rise to the level of a large development project that could change the character of an existing single-family neighborhood. The increased at which people can develop ADUs will also allow people to aging in place, meeting the needs of an underrepresented housing population.

The proposed amendments support the General Plan Goals and Policies by providing increased flexibility for the development of ADUs, while also complying with the state law mandates.

PUBLIC OUTREACH/INTEREST

Staff followed Council Policy 6-30: Public Outreach Policy, in that notices for the public hearings were posted on the City’s website and published in the San Jose Post-Record and emailed to a list of interested groups and individuals. This staff report and attachments were posted on the City’s website. Staff has been available to respond to questions from the public.

Staff initiated outreach efforts to gather public input on the proposed Zoning Code changes, including the pending Zoning Code amendments as discussed in this staff report, including four community meetings and three focus group meetings.

Date	Outreach	Location
February 5, 2018	Focus Group - Design Professionals	San José City Hall
February 8, 2018	Focus Group – Housing Groups	San José City Hall
February 12, 2018	Community Meeting	San José City Hall
February 24, 2018	Focus Group - Design Professionals	San José City Hall
March 22, 2018	Community Meeting	Almaden Community Center
March 26, 2018	Community Meeting	Alum Rock Library
March 29, 2018	Community Meeting	Willow Glen Community Center

Staff incorporated most suggestions from the public into the proposed amendments, including:

1. Lowering the allowable minimum lot size for ADUs.

2. Allowing the construction of a second story detached ADUs.
3. Reducing setback requirements along the rear and side property lines.
4. Increasing gross unit floor area.
5. Allowing parking in the front and side setback areas for ADUs resulting from the conversion of existing garages and other accessory buildings.
6. Publishing a Planning Division webpage with centralized updated information.

The following public suggestions have not been included in the recommended Zoning Code changes:

- ***Allow a second bedroom for ADUs.*** The code currently allows one bedroom in an ADU. There is no proposed change to this requirement. Some stakeholders expressed interest in allowing two bedrooms for additional room and flexibility for a family to move in. While Staff understand that more bedrooms would provide greater flexibility to accommodate a variety of housing needs, Staff foresee that allowing two bedrooms in ADUs will result in the rental of the unit to multiple tenants or allow for larger average households, making the unit no longer ancillary to a primary one-family dwelling. This could result in potential impacts to City infrastructure and services where the state has limited the collection of fees to cover the increased need for new infrastructure and services. Also, due to the state’s parking exemption requirements, larger units with more people could further exacerbate the spill-over parking issue on city streets. Staff understands that more bedrooms would provide greater flexibility to accommodate a variety of housing needs, the General Plan encourages the preservation of single-family neighborhood character and use.
- ***Reduce or eliminate fees for ADUs.*** Stakeholders expressed a desire to have all fees eliminated from the ADU process. The Planning Division does not charge any fees for Secondary Units. Any building costs for these units are based on the staff time used to review the technical plans. Additionally, Title 20 does not regulate school fees, park fees, and utility fees associated with ADUs. Changes to these fees will require other departments to make changes to their fee schedules or will require state law to mandate the fee removal or reduction.

COORDINATION

The preparation of the proposed ordinance and this staff report were coordinated with the City Attorney’s Office and the Housing Department.

CEQA

Determination of Consistency with the Envision San José 2040 General Plan Final Program Environmental Impact Report (FEIR), for which findings were adopted by City Council through Resolution No. 76041 on November 1, 2011, and Supplemental EIR Resolution No. 77617, adopted by City Council on December 15, 2015, and Addenda thereto; Downtown Strategy 2000 FEIR, Resolution No. 72767, and Addenda thereto; North San José Development

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Policies FEIR, Resolution No. 72768, and Addenda thereto; and Diridon Station Area Plan FEIR, Resolution No. 77096 and Addenda thereto (collectively, the "Final Program EIRs") was prepared for this Code update. Pursuant to Section 15168 of the CEQA Guidelines, the City of San José has determined that this activity is within the scope of the earlier approved programs and the Final Program EIRs adequately describe the activity for purposes of CEQA. The project does not involve new significant effects beyond those analyzed in the Final Program EIRs.



ROSALYNN HUGHEY, DIRECTOR
Planning, Building and Code Enforcement

Attachments:

- 1) Draft marked-up text with proposed Zoning Code Amendments
- 2) Public Correspondence

STAFF DRAFT CODE AMENDMENTS- May 2018

20.30.150 - Secondary units.

Notwithstanding any other provision of this Title to the contrary, secondary dwellings that meet all of the following criteria shall be allowed pursuant to the provisions of this Chapter:

- A. Zoning District. A secondary dwelling that is attached to or detached from a one-family dwelling shall be permitted only in: (1) the R-1 zoning districts, the R-2 zoning district ~~or the R-M zoning district~~ in accordance with the provisions of Section 20.30.100, or (2) in planned development zoning districts that are authorized in accordance with Chapter 20.60 of this Title ~~if and that are (a) the planned development is~~ subject to the standards and allowed uses of an R-1 zoning district, or (b) the secondary dwelling conforms to the development and use standards of the planned development district.
- B. Minimum Lot Size. The minimum lot size on which a Secondary Dwelling ~~shall~~ may be allowed is ~~five thousand~~ three thousand (3,000) four hundred forty-five square feet.
- C. Density. A secondary dwelling shall not be included in calculation of residential density for the purpose of determining general plan conformance.
- D. Maximum Secondary Dwelling Floor Area. The increased floor area of an attached secondary dwelling shall not exceed fifty percent (50%) of the existing living area of the primary dwelling or fifty (50%) of the proposed living area of the primary dwelling if the primary dwelling is being built or enlarged concurrently with construction of the secondary dwelling unit. A secondary dwelling shall not exceed the following maximum gross floor area, measured to the outside surface of the exterior walls, and from the inside face if attached to an existing building wall:
 1. Six hundred square feet for a secondary dwelling on a lot with an area of at least three thousand (3,000) ~~nine thousand~~ square feet ~~or less up to five thousand four hundred forty-four (5,444) square feet;~~
 2. ~~Six hundred fifty~~ Seven hundred square feet for a secondary dwelling on a lot with an area of ~~greater than nine thousand square feet~~ at least five thousand

- four hundred forty-five (5,445) and up to and up to ten thousand nine thousand (9,000) square feet;
3. Eight hundred square feet for a secondary dwelling on a lot with an area greater than nine thousand (9,000) square feet and up to ten thousand (10,000) square feet.
 4. Nine hundred (900) square feet for a secondary dwelling on a lot with an area greater than ten thousand (10,000) square feet.

Table 20-55

<u>Minimum Lot size</u>	<u>Maximum gross floor area</u>
<u>At least 3,000 square feet and up to 5,444 square feet</u>	<u>600 square feet</u>
<u>At least 5,445 square feet and up to 9000 square feet</u>	<u>700 square feet</u>
<u>Greater than 9,000 Square feet and up to 10,000 square feet</u>	<u>800 square feet</u>
<u>Greater than 10,000 Square feet</u>	<u>900 square feet</u>

- E. Required Facilities. A secondary dwelling shall include all of the following facilities:
 1. A kitchen (including a sink, food preparation counter, storage, ~~and cabinets~~, and permanent cooking facilities such as an oven and range or cooktop, that meet Building Code standards); and
 2. A full bathroom (including sink, toilet, and shower and/or bath facilities.
- F. Bedroom Requirement and Maximum Bedroom Area. A secondary dwelling is required to contain a combined sleeping and living area or one bedroom and shall include no more than one bedroom and one living area. The floor area of the bedroom shall not exceed four hundred (400) square feet.
- G. Bathroom Limit. A secondary dwelling shall contain no more than one bathroom.

- H. Maximum Accessory Storage Area. The total size of any closet or other enclosed storage area within the secondary dwelling shall not exceed sixty (60) square feet of floor area.
- I. Required Secondary Dwelling Parking.
1. One additional on-site parking space, in addition to the required on-site parking spaces for the one-family dwelling, is required for a secondary dwelling, except as provided in subsection 3 below. Tandem parking that otherwise complies with setback and paving requirements set forth in Sections 20.90.120 and 20.90.140 and Chapter 20.95 of the Municipal Code, shall be allowed.
 2. The required on-site parking space for a secondary dwelling may be located on a garage driveway-~~apron~~ in the front setback area of the lot on which a secondary dwelling is situated provided that the driveway-~~apron~~ is at least eighteen (18) feet in length.
 3. No additional parking shall be required for a secondary dwelling that meets any of the following criteria:
 - 4a. The secondary dwelling is located within one-half mile of, and has a path of travel that is always publicly accessible to a site containing an existing public rail-transit station or at least one public bus ~~route stop with a frequency of service interval of fifteen minutes or less during the morning and afternoon peak commute periods.~~
 - 2b. The secondary dwelling is located within a historic district identified in the city's historic resources inventory as defined in Chapter 13.48 of Title 13 of this Municipal Code.
 - 3c. The secondary dwelling is part of the existing primary residence, or within, or part of, an existing Accessory structureBuilding.
 - 4d. When on-street parking permits are required but not offered to the occupant of the secondary dwelling.
 - 5e. When there is a motor vehicle that is operated as part of a regional fleet by a public agency or publicly-leased motor-vehicle-sharing

organization and provides hourly and daily service located within one block of the secondary dwelling.

J. Required Replacement Parking for Primary Dwelling Parking Demolished or Converted for Secondary Dwelling Construction. When a garage, carport, or covered parking structure is demolished or converted in conjunction with the construction of a Secondary Dwelling, any required off-street parking spaces that were provided by such garage, carport, or covered parking structure, shall be replaced in accordance with Section 20.90.220.B.2.

K. Development Standards. Secondary dwellings shall comply with all of the following development standards:

1. The secondary dwelling shall be subject to the setback requirements for a one-family dwelling in ~~of~~ the zoning district in which the one-family dwelling is located, as set forth in this chapter except as follows: ~~that a secondary dwelling which does not exceed one story above grade shall have a minimum rear setback of five feet, provided that such secondary dwelling shall not occupy more than fifty percent of the area between the rear setback otherwise required and said five-foot rear setback.~~
 - a. Conversion of Existing Accessory Building - No setback over the setback specified for an Accessory Building shall be required for an existing Accessory Building, or garage, that is converted to a Secondary Dwelling, unless required to meet current Building and Fire Code requirements. ~~No setback shall be required for an existing garage that is converted to a secondary dwelling and a minimum setback of five feet from the side and rear lot lines shall be required for an attached secondary dwelling.~~
 - b. New detached Secondary Dwelling - No setback over the setback specified for an Accessory Building shall be required for a new detached Secondary Dwelling that does not exceed the maximum height set forth in Subsection 20.30.150.J.5 for a one story Secondary Dwelling, unless required to meet current Building and Fire Code requirements. ~~Additional setback requirements may apply as a result of "no-build" easements.~~

- c. Second Story Secondary Unit - and a A minimum setback of five (5) feet from the side and rear lot lines shall be required for an ~~attached~~ detached Secondary Dwelling that is constructed above an existing accessory Building, including a detached garage.
- d. Additional setback requirements may apply under the Building and Fire Codes or as a result of "no-build" easements.
2. An attached secondary dwelling shall share a common wall with the one-family dwelling, or shall share an integral roof structure having the same framing system and roof covering as the one-family dwelling and shall be separated from the one-family dwelling by no more than ten (10) feet at any given point.
3. A detached secondary dwelling shall be located in the rear yard of the lot of the one-family dwelling.
4. A detached secondary dwelling shall be located at least six (6) feet away from the one-family dwelling.
5. A detached one story secondary dwelling shall be limited to a maximum of ~~one story and height of~~ eighteen (18) feet ~~in height~~, with an average roof height of no greater than fourteen (14) feet. Average roof height is measured halfway up the slope of the roof, and in no case shall any portion of the roof height of a detached secondary dwelling exceed eighteen (18) feet, except that a detached accessory dwelling constructed above an existing or proposed attached accessory building, including a garage may have a maximum roof height of twenty two (22) feet above grade. Roof height shall be determined in accordance with San José Municipal Code Section 20.200.510.
6. A detached secondary dwelling may ~~not~~ be attached to an existing or proposed accessory building, including a garage except that a detached secondary dwelling may be attached to a detached garage so long as applicable current building code requirements and requirements to address fire or safety hazards are met. A detached secondary dwelling that is attached to an existing or proposed accessory building, including a detached

secondary dwelling constructed above an existing or proposed accessory building, shall not have any connecting opening between the accessory building and secondary dwelling, unless all connected areas meet current residential building and fire code requirements and the maximum gross square footage for all connected areas does not exceed the limits set forth in Section 23.30.150.D above.

7. The cumulative total of the rear yard covered by the secondary dwelling, accessory buildings, and accessory structures, except pools, shall not exceed forty percent (40%) of the rear yard.
8. If situated on a lot that is equal to or greater than one-half (1/2) an acre in size, a secondary dwelling shall be located more than one hundred feet (100) from a riparian corridor as measured from top of bank or vegetative edge, whichever is greater.
9. A secondary dwelling shall be subject to provisions in this Municipal Code that prevent adverse impacts on a real property that is listed in the California Register of Historic Places, otherwise known as the California Register of Historic PlacesResources.

KL. Design Standards. Secondary dwellings shall comply with the following design standards:

1. An attached ~~The~~ secondary dwelling shall ~~be constructed with facade materials similar in texture and appearance to incorporate architectural style, and similar materials and color of~~ the one-family dwelling, including but not limited to roofing, siding, and windows and doors.
2. A detached ~~The~~ secondary dwelling shall be visually compatible with the architectural style of ~~match the roof pitch and roof form of~~ the one-family dwelling ~~in order to blend with the architecture of the one-family dwelling.~~
3. The front door of any attached secondary dwelling shall not be located on the same facade as the front door of the one-family dwelling if that facade fronts onto a street, unless all other locations for placement of the secondary dwelling front door would require a passageway as defined in Government Code Section 65852.2(i)(5). For a detached secondary dwelling constructed

above an existing or proposed accessory building, including a garage, an exterior stairway or fully enclosed interior stairway access may be allowed.

4. Minimum sill height for openings for a second story detached secondary dwelling unit constructed above an accessory building shall be maintained at five (5) feet, measured from the interior floor level, along the building walls parallel to the nearest side and rear property lines, and located within a minimum setback of fifteen (15) feet from those property lines.

- L. Application - Owner Certification. As part of the building permit application process for a secondary dwelling, the owner of record shall submit a declaration, under penalty of perjury, stating that the secondary dwelling is not intended for sale separate from the primary residence, but may be rented. Nothing in this section shall be deemed to affect the legal status of a secondary dwelling built with a lawfully issued permit if the property is subsequently transferred or sold, or if the one-family dwelling or secondary dwelling is subsequently rented or leased.
- M. Code Compliance - One-Family Dwelling. An application for a secondary dwelling building permit shall not be deemed complete, and a building permit shall not be issued, if the city determines that the one-family dwelling will continue to have uncorrected violations involving applicable zoning and building code requirements, or fire or safety hazards.
- N. Other Permits Required. Nothing in this section supersedes requirements for obtaining development permits pursuant to this title, or for properties subject to the historic preservation permit requirements set forth in Chapter 13.48 of Title 13 of the San José Municipal Code.
- O. Compliance with Building and Zoning Codes. A secondary dwelling shall be built in accordance with the building code set forth in Title 24 of the San José Municipal Code ("Municipal Code") and in conformance with Title 20 of the San José Municipal Code.
- P. Located on One Lot. A secondary dwelling shall be located within the same subdivision unit and on the same legal parcel as the one-family dwelling to which it is ancillary

20.30.440 - Front setback - Limitation on amount of paved surface.

No more than fifty percent (50%) of the required front setback for any lot containing a one-family dwelling or any lot located in any R-1 residence district with a frontage width of forty (40) feet or greater shall be paved with asphalt, cement or any other impervious [or pervious](#) surfaces.

1. For lots which have a frontage width less than forty (40) feet, paving in the front setback area is limited to ten feet [\(10\)](#) in width or fifty percent (50%) of the width of the lot at any given point, whichever is greater.
2. Notwithstanding subsection 1, for lots which have a frontage width less than forty (40) feet, a paved area directly contiguous with, and providing primary access to, two side by side required parking spaces, may exceed the fifty percent (50%) limitation as long as it is no more than twenty-five (25) feet long and eighteen (18) feet wide.

20.90.120 - Setbacks

- A. No off-street vehicle parking space or off-street loading space shall be located within any side or front setback area required by other provisions of this Title, unless the Director finds that the location of the off-street vehicle parking space or off-street loading space within the front or side setback area will not adversely affect surrounding development and issues a development permit or a development exception if no development permit is required.
- B. No setback for any vehicle parking area consisting of six or more parking spaces located in, or adjoining, any residential district shall be less than the front setback, and corner side setback, if any, of the adjoining residential lot or parcel, unless the director finds that the location of the off-street vehicle parking space or off-street loading space within the front setback or corner side setback area will not adversely affect surrounding development and issues a development permit or a development exception if no development permit is required.
- C. In the main street districts, the following additional provisions shall apply:

1. At-grade parking that is not fully enclosed within a building shall be set back fifty feet or more from the main street, except that an interim off-street parking establishment in conformance with the requirements of Table 20-156 may be located within fifty feet of the main street.
2. At-grade parking that is not fully enclosed within a building shall be set back a minimum of five feet from any minor or major cross street, which setback area shall be landscaped and shall be maintained in good condition at all times.
3. If at-grade parking that is not fully enclosed within a building includes six or more parking spaces, it shall be effectively screened on all sides which adjoin, face or are directly opposite any lot in a residential zoning district by a masonry wall or solid wood fence no less than five feet in height.
4. At grade parking areas not located within a structure shall include one tree for every four parking space.
5. Parking structures shall not be located within fifty feet of the main street unless they are submerged below grade or are integrated within buildings that conform to the active commercial building frontage requirements of Section 20.75.130.

D. Parking that is required under Section 20.30.150.I shall not be subject to subsection A. above.

20.90.220 - Reduction in required off-street parking spaces.

A. Alternative Transportation.

1. A reduction in the required off-street vehicle parking spaces of up to fifty percent may be authorized with a development permit or a development exception if no development permit is required, for structures or uses that conform to all of the following and implement a total of at least three transportation demand management (TDM) measures as specified in the following provisions:
 - a. The structure or use is located within two thousand feet of a proposed or an existing rail station or bus rapid transit station, or an area designated as a neighborhood business district, or as an urban village, or as an area

subject to an area development policy in the city's general plan or the use is listed in Section 20.90.220.G; and

- b. The structure or use provides bicycle parking spaces in conformance with the requirements of Table 20-90.
- c. For any reduction in the required off-street parking spaces that is more than twenty percent, the project shall be required to implement a transportation demand management (TDM) program that contains but is not limited to at least one of the following measures:
 - i. Implement a carpool/vanpool or car-share program, e.g., carpool ride-matching for employees, assistance with vanpool formation, provision of vanpool or car-share vehicles, etc., and assign carpool, vanpool and car-share parking at the most desirable on-site locations at the ratio set forth in the development permit or development exception considering type of use; or
 - ii. Develop a transit use incentive program for employees and tenants, such as on-site distribution of passes or subsidized transit passes for local transit system (participation in the regionwide Clipper Card or VTA EcoPass system will satisfy this requirement).
- d. In addition to the requirements above in Section 20.90.220.A.1.c for any reduction in the required off-street parking spaces that is more than twenty percent, the project shall be required to implement a transportation demand management (TDM) program that contains but is not limited to at least two of the following measures:
 - i. Implement a carpool/vanpool or car-share program, e.g., carpool ride-matching for employees, assistance with vanpool formation, provision of vanpool or car-share vehicles, etc., and assign carpool, vanpool and car-share parking at the most desirable on-site locations; or
 - ii. Develop a transit use incentive program for employees, such as on-site distribution of passes or subsidized transit passes for local transit system (participation in the region wide Clipper Card or VTA EcoPass system will satisfy this requirement); or

- iii. Provide preferential parking with charging station for electric or alternatively-fueled vehicles; or
- iv. Provide a guaranteed ride home program; or
- v. Implement telecommuting and flexible work schedules; or
- vi. Implement parking cash-out program for employees (non-driving employees receive transportation allowance equivalent to the value of subsidized parking); or
- vii. Implement public information elements such as designation of an on-site TDM manager and education of employees regarding alternative transportation options; or
- viii. Make available transportation during the day for emergency use by employees who commute on alternate transportation (this service may be provided by access to company vehicles for private errands during the workday and/or combined with contractual or pre-paid use of taxicabs, shuttles, or other privately provided transportation); or
- ix. Provide shuttle access to Caltrain stations; or
- x. Provide or contract for on-site or nearby child-care services; or
- xi. Incorporate on-site support services (food service, ATM, drycleaner, gymnasium, etc. where permitted in zoning districts); or
- xii. Provide on-site showers and lockers; or
- xiii. Provide a bicycle-share program or free use of bicycles on-site that is available to all tenants of the site; or
- xiv. Unbundled parking; and
- e. For any project that requires a TDM program:
 - i. The decision maker for the project application shall first find in addition to other required findings that the project applicant has demonstrated that it can maintain the TDM program for the life of the project, and it is reasonably certain that the parking shall continue to be provided and maintained at the same location for the services of the building or use for which such parking is required, during the life of the building or use; and

- ii. The decision maker for the project application also shall first find that the project applicant will provide replacement parking either on-site or off-site within reasonable walking distance for the parking required if the project fails to maintain a TDM program.
2. A reduction in the required off-street vehicle parking spaces for a structure or use of up to ten percent or up to two off-street vehicle parking spaces, whichever is less, may be authorized with a development permit or a development exception if no development permit is required for a particular use, for nonresidential uses in conformance with the following:
- a. In addition to the off-street bicycle parking spaces required for the structure or use, ten off-street bicycle parking spaces consisting of bicycle racks or five off-street bicycle parking spaces consisting of bicycle lockers shall be provided for every one required off-street vehicle parking space that is reduced; and
 - b. The bicycle parking spaces shall conform to all of the requirements of this chapter.
- B. One-Family Dwellings.
- 1. A reduction in the required off-street vehicle parking for a one-family dwelling is allowed by right if the following criteria are met:
 - a. At least one covered parking space is provided; and
 - b. No more than one dwelling [or one One-Family Dwelling and one Secondary Dwelling](#) occupies the lot; and
 - c. The location of the required covered parking is set back a minimum of forty-five feet from the front lot line when the garage is accessed via a curb cut from the front lot line and forty feet from the side corner lot line when the garage is accessed via a curb cut from the side corner lot line; and
 - d. The required covered parking is accessed by a driveway of a width no less than ten feet and no more than twelve feet; and
 - e. Any curb cuts accessing the parking shall be in proportion to the driveway width; and

- f. No additional paving in the front setback shall be designated or used for parking; and
 - g. The covered parking structure shall meet all other applicable regulations of this title.
 - 2. Except for a secondary dwelling meeting one of the exception criteria from secondary dwelling unit parking requirements as set forth in Section 20.30.150.I of this Code, when a garage, carport, or covered parking structure is demolished or converted in conjunction with the construction of a Secondary Dwelling, and the required off-street parking spaces that were provided by such garage, carport, or covered parking structure, are required to be replaced on-site, the replacement spaces may be covered spaces, uncovered spaces, or tandem spaces, or replaced by the use of mechanical automobile parking lifts. A garage, carport or parking structure shall be deemed converted when all or any part of a Secondary Dwelling is proposed to be constructed in all or any part of the area occupied by a garage, carport or parking structure. Such required replacement parking may be located in any setback area of the lot on which a secondary dwelling is situated provided that t~~The location, design, and development of such~~ required replacement ~~required~~ parking spaces shall comply with Sections ~~s~~ 20.90.120 and 20.90.140 of Chapter 20.90, and the provisions for stormwater management and treatment in Chapter 20.95, unless specific findings are made that parking in these areas is not feasible based on specific site or regional topographical or fire and life safety conditions. Such required replacement parking spaces may be covered spaces, uncovered spaces, or tandem spaces, or spaces using mechanical automobile parking lifts.
- C. Ground Floor Commercial Uses in Neighborhood Business Districts or Urban Villages.
- 1. The off-street vehicle parking requirement for uses subject to Note 3 on Table 20-190 in Section 20.90.060 shall be reduced to one space per four hundred square feet of floor area, provided all of the following requirements are met:

- a. The site is designated on the general plan land use/transportation diagram with the neighborhood business district overlay or designated as urban village; and
 - b. The use is located on the ground floor of a building; and
 - c. No parking reduction is approved for a use pursuant to Section 20.90.220.A.1 of this chapter.
- D. Multiple Family Residential in the Main Street Districts. The decision maker may reduce the required vehicle parking spaces for a multiple-family residential use in the pedestrian oriented zoning districts with a development permit based on the following findings:
- 1. The project includes one or more of the following options:
 - a. The project includes unbundled parking that maximizes the efficient use of available parking; or
 - b. The project includes a car-share program that reduces the demand for parking spaces; or
 - c. The project promotes safe pedestrian movements by eliminating or significantly reducing the need for vehicular driveways to the Main Street by means of parcel assembly or shared access or by providing a new pedestrian walkway to the Main Street that facilitates safe and convenient access for a substantial segment of the surrounding neighborhood; and
 - 2. The project does not include a parking reduction pursuant to Section 20.90.220.G; and
 - 3. For a project that includes ground floor commercial building space, the project is designed in a manner that ensures the availability of adequate parking for ground floor commercial uses; and
 - 4. The project provides vehicle parking spaces at a parking ratio of no less than 0.8 parking spaces per residential unit.
- E. Nonresidential Uses in a Main Street District. The decision maker may reduce the required vehicle parking spaces for non-residential uses by up to thirty percent with a development permit based on the following findings:

1. The project achieves one of the following:
 - a. The project promotes safe pedestrian movements by eliminating or significantly reducing the need for vehicular driveways to the Main Street through parcel assembly or shared access or by providing a new pedestrian walkway to the Main Street that facilitates safe and convenient access for a substantial segment of the surrounding neighborhood; or
 - b. The project promotes the efficient use of available parking by providing shared parking facilities; and
2. The project does not include a parking reduction for ground-floor commercial building area subject to reduced parking pursuant to Section 20.90.220.A or 20.90.220.C of this title; and
3. For a project that includes ground floor commercial building space, the project is designed in a manner that ensures the availability of adequate parking for ground floor commercial uses.

F. Miniwarehouse/Ministorage.

1. A reduction in the required off-street parking may be authorized with a development permit for those miniwarehouse/ministorage buildings meeting all of the following requirements:
 - a. Buildings are single story; and
 - b. Loading spaces are available directly adjacent to those storage units contained in the single-story building.

G. Other Uses.

1. Up to a twenty percent reduction in the required off-street parking for private instruction or personal enrichment; sororities, fraternities and dormitories occupied exclusively (except for administrators thereof) by students attending college or other educational institutions; SROs; efficiency living units; emergency residential shelters; residential care/service facilities; convalescent hospitals; hotels/motels; bed and breakfast inns; senior housing uses; recreation uses; gasoline service or charge stations when combined with other uses; and performing arts rehearsal space uses may be approved with a development permit or a development exception if no development

permit is required, provided that such approval is based upon the findings that the project is either within two thousand feet of an existing or proposed bus or rail transit stop; or the use is clustered with other uses that share all parking spaces on a site.

2. Up to a one hundred percent reduction in the required off-street parking for emergency residential shelters may be approved with a development permit or a development exception if no development permit is required.

20.100.300 - Recordation.

- A. Within thirty [\(30\)](#) days of the permit or other approval becoming effective, in accordance with the provisions of Section 20.100.290, fulfillment of all conditions precedent to release pursuant to this chapter and the payment of fees, a certificate identifying the permit or other approval shall be recorded by the city. The permit or other approval and the rights and restrictions therein shall run with the land to the fullest extent allowed by law.
- B. If any permit or other approval is revoked after a hearing on an order to show cause pursuant to this chapter, a certificate of revocation shall be recorded with the county recorder's office.
- C. The provisions of Sections 20.100.300A. and B. above shall not apply to the following permits:
 1. Administrative permits that do not include the installation of utility structures; or
 2. Tree removal permits; or
 3. Special use permits that only include demolition of existing buildings or structures; or
 4. Planned development permits that only include demolition of existing buildings or structures; [or](#)
 5. [Single Family House Permits subject to administrative approval under Section 20.100.1040. A. or B.\)](#)

20.100.1040 - Additional development requiring a single-family house permit.

- A. Issuance of a single-family house permit is subject to the administrative procedures set forth in this part, if the issuance of a building permit will result in a single-family house that is a historic resource, but is not a city landmark or located in a city landmark historic district, with a floor area ratio equal to or less than forty-five hundredths, and the issuance of a building permit is for minor modifications involving incidental enlargement, reconstruction, replacement, repair, remodeling, rehabilitation, restoration and/or exterior alteration of a historic resource, fully conforms to approved design guidelines, and does not affect the historic significance or character, use, intensity, architectural style, circulation or other site function of the property.
- B. ~~Any application which in the determination of the director of planning would not meet the requirements and criteria of Subsection 20.100.1040 A above shall be subject to the director public hearing procedures set forth in this part.~~
- C. Issuance of a single-family house permit is subject to the administrative procedures set forth in this part, if the issuance of the building permit will result in a single-family house with a floor area ratio greater than forty-five hundredths but equal to or less than sixty-five hundredths, and all of the following applicable criteria are met:
1. Building permit does not authorize removal of more than fifty percent of the exterior walls of an existing house;
 2. Building permit is for an addition to an existing house and the addition is for either one or both of the following:
 - a. A single story and ground floor addition; and/or
 - b. A second-story addition which results in a second story which is no larger than sixty percent of existing first floor area and which is set back ten feet from the required front setback;
 3. Building permit does not authorize the enclosure or net loss of ten percent or more of an existing porch;
 4. Building permit authorizes an attached garage only if the houses on each side of the subject lot have existing attached garages;
 5. Building permit requires the roofline, materials, trim and decoration details of the new construction to be the same as that on the existing house;

6. Building permit authorizes alteration to a single-family house that is a historic resource, but is not a city landmark or located in a city landmark historic district, which alterations fully conform to or exceed approved design guidelines.

7. Building permit authorizes work within a historic district identified in the City's historic resources inventory as defined in Chapter 13.48 of Title 13 of this Municipal Code and (a) is for a detached Secondary Dwelling or (b) does not involve exterior alterations to any existing building converted to a Secondary Dwelling.

C. Subject to the provisions of Section 20.100.1030, if the issuance of a building permit will result in a single-family house with a floor area ratio greater than forty-five hundredths and all the applicable criteria of either Subsection 20.100.1040.A or 20.100.1040.B are not met, issuance of a single-family house permit shall be subject to the director public hearing procedures set forth in this part.

4/6/2018

Mail - aparna.ankola@sanjoseca.gov

ADU policy change

markgonia@aol.com

Tue 4/3/2018 5:40 PM

To: Ankola, Aparna <aparna.ankola@sanjoseca.gov>;

I am against changing the current ADU Policy. Thanks for asking. Mark Gonia

4/6/2018

Mail - aparna.ankola@sanjoseca.gov

ADU IN sAN jOSE

degifford@aol.com

Tue 4/3/2018 8:01 PM

To: Ankola, Aparna <aparna.ankola@sanjoseca.gov>;

Aparna,

I love the idea of ADU and would like to have one in my back yard, however, with the rent control restrictions in San Jose, future decisions from city counsel members could destroy any ADU value.

Trust has been lost to encourage a large monetary outlay for ADUs.

Respectfully,

Duane Gifford.

ADU question

DeAnn Swanson <dsdf2-gen@yahoo.com>

Tue 4/3/2018 8:39 PM

To: Ankola, Aparna <aparna.ankola@sanjoseca.gov>;

Hello Aparna,

The newsletter mentioned an ADU is not currently allowed in a "planned development". What is a planned development? For instance, we live in the Crossgates Almaden neighborhood, which has a homeowner's association. Is that considered a planned development? I hope not because we are hoping to eventually build an ADU on our large single family home corner lot.

Best Regards,

DeAnn

ADU Policies

Don Williams <donwilliams@aol.com>

Tue 4/3/2018 10:06 PM

To: Ankola, Aparna <aparna.ankola@sanjoseca.gov>;

Aparna:

I started the permit process for a Secondary Unit last fall. I have met all the criteria for building the unit (I have a 13,000 square foot lot), so do not have any issues.

Until I got to the GeoHazard problem.

Because my property is in a "GeoHazard" zone (apparently, some fracture fault may run through our area) I am being required to do the following:

- Dig a trench approximately 50 feet long in the very area where I will be building the unit.
- Get a Certified Geologist to inspect the trench, do further studies, and write a report about any earthquake dangers
- If there is anything found, the Geologist should give recommendations to the architect, possibly requiring a redesign of the foundation or unit
- Pay the city about \$1200 for them to review the report.
- And even after all this, the city may deny me the ability to build there if they find something they do not like

The total cost for this? Likely \$12,000 to \$25,000

It appears that the main reason for this requirement is because it is considered "new construction". My neighbors across the street (also in the GeoHazard zone) did not have to do this, even though they added 1400 square feet of foundation to their previous house. (My entire ADU is only 490 square feet.) I also checked with some other neighbors who did a major remodel and expansion, and they were not required to do this either.

My main house has been on this site for 55 years, and never had this inspection nor shows any issues under the house. The secondary unit is only 6 feet from my house, wedged in the back corner of my property. It is essentially surrounded by 4 houses, all over 50 years old that never had inspections nor issues.

I had 2 geologists visit the site so far, and both of them felt there is very little to no threat that there is an issue. They do not believe they will find anything when this expensive ditch is dug or they do the thousands of dollars of research and report writing. But they would do the investigation and report just to satisfy the city requirements.

And, ironically, digging a 50 foot trench right under where the unit will go actually serves to *weaken* the foundation! Thus, it requires backfilling and compacting or using a slurry to recreate a semi-stable foundation for the unit!

Furthermore, the geologists told me that the geoHazards are setup by the county, but it up to the cities to decide requirements for the residents. People in other cities do not need to do this, even though they are in these geohazard zones. So this is clearly a San Jose thing.

I have put my ADU plans on hold. I am hoping that something can be done about this GeoHazard requirement. It basically DOUBLES all the city fees (which are already 12k - \$15k).

proposed AUD ordinances

Judy Ulibarri <judyne@att.net>

Thu 4/5/2018 8:05 AM

Inbox

To: Ankola, Aparna <aparna.ankola@sanjoseca.gov>;

The proposed changes have me very concerned. We already have neighbors who have a 120 sq ft accessory building built right on the property line between our yard and their yard. If I read the proposal correctly, they could add to that accessory building making it a AUD as long as they stay 6 feet away from the primary dwelling. Nothing is addressed for the neighboring yards. If this is passed, we could be forced to have a rental unit next door right on our property line and very close to our own single family dwelling. Once again, where do our rights as homeowners come into play.

Judy Ulibarri